

IN THE SUPREME COURT OF THE STATE OF NEVADA

EARL M. BELCHER A/K/A EARL  
MONROE BELCHER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52040

**FILED**

DEC 11 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT

BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion for an amended judgment of conviction to include jail time credits. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On March 13, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary and one count of grand larceny in district court case number C209385. The district court sentenced appellant to serve in the Nevada State Prison a term of 48 to 120 months for burglary and a consecutive term of 24 to 60 months for grand larceny. The district court ordered these sentences to run consecutively to the sentence imposed in district court case number C205988. No credit for time served was provided in the instant case. No direct appeal was taken.

On June 12, 2008, appellant filed a proper person motion for an amended judgment of conviction to include jail time credits. On June 30, 2008, the district court denied the motion. This appeal followed.

In his motion, appellant sought 377 days of credit for time served between February 10, 2005, and February 22, 2006.

A claim for additional presentence credits is a claim challenging the validity of the judgment of conviction and sentence that must be raised on direct appeal or in a post-conviction petition for a writ of habeas corpus in compliance NRS chapter 34.<sup>1</sup> Thus, appellant's motion should have been treated as a post-conviction petition for a writ of habeas corpus.

Appellant filed his motion more than two years after entry of the judgment of conviction and almost two years after this court's decision in Griffin. Thus, appellant's motion was untimely filed.<sup>2</sup> Appellant's motion was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>3</sup> Appellant did not attempt to demonstrate good cause for his failure to file a timely petition, and thus, appellant's motion was procedurally barred and without good cause.

Moreover, as a separate and independent ground to deny relief, appellant's claim lacked merit. NRS 176.055(1) provides that a defendant will be given credit for the amount of time actually spent in confinement before the conviction, unless the confinement was pursuant to the judgment of conviction for another offense. The record on appeal indicates that appellant was in custody pursuant to a judgment of

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<sup>1</sup>See Griffin v. State, 122 Nev. 737, 744, 137 P.3d 1165, 1166 (2006).


<sup>2</sup>See NRS 34.726(1).


<sup>3</sup>See id.


conviction in another case during this period. Therefore, we conclude that the district court did not err in denying the motion.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.<sup>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Sally L. Loehrer, District Judge  
Earl M. Belcher  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>4</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).